293. So there might be a valid marriage in this case, although the man's actual intent probably was to induce cohabitation without marriage. See 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, §§ 327, 334. The woman, however, did not consent to get married, for she supposed herself already married to this man. But she did intend to maintain presently and permanently a marital, not an illicit, relation with him. Such consent should be sufficient for a common-law marriage. *Matter of Sheedy*, 189 App. Div. 582, 178 N. Y. Supp. 863. See 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 301. The same kind of consent is involved where the marital relation continues after the impediment to a previous invalid marriage is removed, and these are generally held valid common-law marriages. *Erwin* v. *Nolan*, 217 S. W. (Mo.) 837; *Sims* v. *Sims*, 85 So. (Miss.) 73. See 27 HARV. L. REV. 378. The question is a practical one and the practical answer of the principal case should prevail over logical refinements.

MASTER AND SERVANT — WORKMEN'S COMPENSATION — ILLEGAL EMPLOYMENT — LIABILITY OF CHARITABLE INSTITUTION. — The plaintiff, a minor, was employed by a hospital. While engaged in certain work in violation of a child labor statute, she was injured through the negligence of her employer in failing to provide safe appliances with which to work. She sought to recover under the Workmen's Compensation Act. *Held*, that she may do so. *Wargo* v. *State Workmen's Insurance Fund*, 68 Pitt. L. J. 661 (Pa.).

It is generally held that one who is illegally employed is not within the Workmen's Compensation Acts. *Kemp* v. *Lewis*, [1914] 3 K. B. 543; *Messmer* v. *Industrial Board*, 282 Ill. 562, 118 N. E. 993. *Ide* v. *Faul & Timmins*, 179 App. Div. 567, 166 N. Y. Supp. 858, *contra*. This rule is followed in Pennsylvania. *Lincoln* v. *National Tube Co.*, 68 Pitt. L. J. (Pa.) 102. However, the injured person has a remedy at common law, in the ordinary case. *Strafford* v. *Republic Iron Co.*, 238 Ill. 371, 87 N. E. 358; *Braasch* v. *Michigan Stove Co.*, 153 Mich. 652, 118 N. W. 366. Hence there is no great injustice in denying compensation. But here the employer was a charitable institution. The older cases allowed no recovery against such an institution for torts, on the ground that the trust property could not be taken to pay a judgment. *Fordyce* v. *Library Association*, 79 Ark. 550, 96 S. W. 155; *Farrigan* v. *Pevear*, 193 Mass. 147, 78 N. E. 855. The later authorities, however, hold charitable institutions liable for torts to their employees in the same manner as private employers. *McInerny* v. *Hospital Association*, 122 Minn. 10, 141 N. W. 837; *Hewett* v. *Aid Association*, 73 N. H. 556, 64 Atl. 190; *Armendarez* v. *Hotel Dieu*, 145 S. W. (Tex. Civ. App.) 1030. This seems the better view. See 31 HARV. L. REV. 479. But Pennsylvania has clung to the older doctrine. *Fire Insurance Patrol* v. *Boyd*, 120 Pa. St. 624, 15 Atl. 553; *Gable* v. *Sisters of St. Francis*, 227 Pa. St. 254, 75 Atl. 1087. Hence, in the principal case, the plaintiff had no remedy at common law. The court said that, in order to prevent injustice, she would be allowed to recover under the Workmen's Compensation Act, contrary to the usual rule in cases of illegal employment. The result is desirable, although reached in a rather arbitrary way.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — NEGLIGENT EMPLOYER'S RIGHT TO REIMBURSEMENT FROM TORTFEASOR. — The plaintiff was injured in the course of his employment by the concurring negligence of his employer and the defendant. Compensation was awarded him. The Workmen's Compensation Act provided that when a third person was liable to the employee for the injury the employer should be subrogated to the right of the employee against the third person to the extent of the compensation payable. (7 PURDON'S PA. DIGEST, 13 ed., 7785.) The plaintiff claimed his full damages in the interest of himself and his employer. *Held*, that the defendant is liable

for the plaintiff's full damages. *Kerper* v. *Counties Gas & Electric Co.*, 77 Leg. Intell. 868 (Pa.).

Under the acts as originally framed, a non-negligent employer could not recover from a third party whose negligence caused him to pay compensation to an employee. *Interstate Telephone Co.* v. *Public Service Electric Co.*, 86 N. J. L. 26, 90 Atl. 1062; see 28 HARV. L. REV. 307. The mischief of this doctrine lay in imposing liability without fault on the employer while the negligent third party escaped. To relieve this situation the so-called subrogation clauses were inserted in the acts. A case where the party seeking reimbursement is himself negligent is not within the reason of this remedy. Moreover, to hold the statute applicable here is to subvert the principle that there can be no indemnity between joint tortfeasors. *Central of Georgia R. R. Co.* v. *Macon R. R. & Light Co.*, 9 Ga. App. 628, 71 S. E. 1076; *Union Stockyards Co.* v. *Chicago R. R. Co.*, 196 U. S. 217. The literal words of a statute must be construed in the light of its intent. *Holy Trinity Church* v. *United States*, 143 U. S. 457; see BLACK, INTERPRETATION OF LAWS, 2 ed., 68. Subrogation should therefore be denied the employer and the employee allowed to recover only his damages minus the *pro tanto* satisfaction of the compensation. *The Emilia S. De Perez*, 248 Fed. 480. Indeed, some of the subrogation clauses expressly exclude cases where the employer was himself negligent. See 1917 HURD'S ILL. REV. STAT., c. 48, § 152b. In England, indemnity from the negligent third person is apparently regarded as an independent right of the employer. See BEVEN, EMPLOYERS' LIABILITY, 4 ed., 696. Accordingly, where the employer is also negligent recovery is denied. *Cory & Son* v. *France, Fenwick & Co.*, [1911] 1 K. B. 114. But the American authority is in accord with the principal case. *Otis Elevator Co.* v. *Miller & Paine*, 240 Fed. 376; *Shreveport* v. *Southwestern Gas Co.*, 145 La. 680, 82 So. 785.

PHYSICIANS AND SURGEONS — LIABILITY OF PHYSICIAN FOR NEGLIGENCE OF ASSISTANT. — Defendant doctor was treating the plaintiff with hypodermic injections. During defendant's absence on vacation his woman office assistant administered the hypodermic, according to his prior instructions. The assistant negligently broke off and left the needle in the plaintiff's arm with serious resulting injury. *Held*, the plaintiff may recover. *Mullins* v. *Du Val*, 104 S. E. 513 (Ga.).

The line between an agent and an independent contractor is not always easy to draw. In general the test is whether the employer retains control and supervision of the details of the work, or merely can demand the result. See *Harrison* v. *Collins*, 86 Pa. 153; *Morgan* v. *Smith*, 159 Mass. 570; MECHEM, AGENCY, § 747. A doctor, for example, has no control over the details of the work of some one he recommends as a substitute when he goes away, and accordingly the substitute is held to be an independent contractor. *Moore* v. *Lee*, 211 S. W. 214 (Tex.); *Keller* v. *Lewis*, 65 Ark. 578, 47 S. W. 755. The same principle applies to a post-operative hospital nurse or an associate physician during an operation. *Hunner* v. *Stevenson*, 122 Md. 40, 89 Atl. 418; *Morey* v. *Thybo*, 199 Fed. 760. But in the principal case the assistant is subject to her employer's control, whether exercised or not, and in carrying out in detail his instructions is an agent. *Hancke* v. *Hooper*, 7 C. & P. 81.

PROXIMATE CAUSE — UNFORESEEN RESULTS — SUICIDE CAUSED BY INSANITY. — A workman received an injury to his hand. As a result of depression he became insane and committed suicide. *Held*, that his dependents can recover under the Workmen's Compensation Act. *Marriott* v. *Maltby Maine Colliery Co.* 37 T. L. R. 123 (C. A.).

The case is in conformity with the generally accepted rule that when the immediate cause of an injury is itself directly caused by an act, that act is the